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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

COMMENTS OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments to the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("FNPR") released in this docket on August 10, 1993.

NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to interexchange carriers ("IXCs") and subscribers across rural America.

Approximately, 160 of NTCA's members operate small cable television systems in their telephone service area. Most of them provide service under the rural exemption in 47 C.F.R. § 63.58. Many of the companies have fewer than 1,000 subscribers. They generally operate with small staffs. Most of them were established by the telephone companies at the request of subscribers or franchising authorities because service could not be obtained from multiple system operators. Because service is provided in sparsely populated and often isolated areas, the systems are generally not subject to "effective competition."

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Costs, however, are also generally higher in these areas due to a number of reasons including the fact that economies of scale present in more densely populated areas are not present for these systems.

DISCUSSION

I. THE COMMISSION SHOULD ADOPT MEASURES TO RELIEVE SMALL SYSTEMS FROM THE SUBSTANTIAL BURDENS OF ITS RATE REGULATION RULES.

In the FNPR, the Commission stayed the effectiveness of its cable rate regulation rules for systems with 1,000 or fewer subscribers. The Commission indicated it was issuing the stay to give itself the opportunity to evaluate fully the arguments and proposals currently before it on ways to reduce the administrative burdens and compliance costs that may disproportionally affect small cable systems. The Commission also asked for specific comments and further information to enable it to assess the extent of the burden its rate regulation rules impose on small companies. NTCA's comments are addressed to these issues.

NTCA believes the Commission has taken a commendable first step in staying the rate regulation rules for systems with 1,000 or fewer subscribers. It now urges the Commission to provide permanent relief for these systems consistent with prior requests by NTCA and others. In previous comments to the initial Notice of Proposed Rulemaking in this docket, NTCA urged the Commission to adopt alternatives allowing small systems to negotiate rates with local franchising authorities or make simple filing of rates with these authorities.[1] NTCA again urges the Commission to adopt these alternatives.

NTCA also reiterates its agreement with the positions of the Coalition of Small System Operators and the Arizona Cable Television Association in their petitions for reconsideration of the May 13 rate regulation order. Both petitioners stated that the Commission's treatment of small systems contradicts the intent of Section 623(i) of the Cable Television Consumer Protection and Competition Act of 1992. Petitioners stated that the Commission has increased, rather than decreased, the burdens on small companies. They also stated that the current rules fail to build in any meaningful regulatory relief for small systems.[2] NTCA agrees.

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[1] See, reference to NTCA Comments in Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177 (released May 3, 1993), at ¶ 459.

[2] Arizona, for example, pointed out that the exemption from filing an initial basic rate schedule (if permitted by the franchising authority) is especially meaningless because small operators must still wade through Form 393 and the worksheets to determine Maximum Initial Permitted Rates, and unbundled equipment charges. (See, point II(B) below for a discussion of the estimated cost burdens involved in this process). Arizona Petition at 3. The Coalition noted that it took an FCC staff member almost one hour to explain how to fill out the worksheets, even without having to obtain the information to be included. Coalition Petition at 4.

II. APPLICATION OF THE EXISTING RULES TO SMALL SYSTEMS WILL DEFEAT THE CONGRESSIONAL PURPOSE.

A. A number of factors combine to make the provision of service in rural areas a high cost venture.

Most NTCA member systems have less than 1,000 subscribers. Some NTCA member companies have systems with 200 or fewer subscribers. A number of factors may combine to result in above benchmark rates for these systems. Low density and geographical isolation from major population centers and over the air broadcast stations creates a unique set of problems for these member systems operating in remote small towns. The systems are often too isolated to clearly receive over the air broadcast signals. They are also located in areas of the country where terrain presents a problem for transmitting broadcast signals. As a result, some small systems utilize translators and satellites to receive signals. These satellite dishes and channelizing equipment costs are fixed and bear no relation to the number of subscribers. Small systems are also unable to obtain bulk discounts for programming and must often make minimum bill payments that do not vary with size. Due to these factors, small systems may have higher costs. These costs, must in turn, be spread over a small subscriber base. As a result, rates may be above benchmark.

B. The costs of complying with the Commission's current rules impose a greater burden on small systems and their customers.

If the Commission lifts the stay for rate regulation of small systems without providing any further relief, small systems with above benchmark rates will be required to show that their rates are reasonable using whatever cost of service measures the Commission ultimately adopts. Cost studies will be required and will be very expensive for these operators. For a small system with less than 1,000 subscribers and one or two franchises, it is estimated that a minimum of 250 to 300 hours will be required to do a cost study for rate initializations and that as many as 200 hours per year will be required to do cost of service studies for cable service tiers in subsequent years.

These estimates are preliminary and conservative. Their accuracy depends on the ultimate form of the rules and procedures the Commission adopts. It is expected that more time will be involved in the first year when initial rates are established because the rules are in the rulemaking stage and will probably involve challenges and changes prior to Commission approval.

These above benchmark systems will also have to incur costs in connection with Form 393 since the majority of the form relates to the equipment basket.[3] It is estimated that a minimum of 200 hours is required to learn and complete Form 393 properly. It is estimated that another 100 hours will be required in the first year and each year thereafter for reporting and monitoring. This estimate applies for above benchmark as well as below benchmark systems. This time does not include all of the issues associated with billing, customer notification or dealing with local authority formal procedures. Totaling these

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[3] See, note 2 above.

conservative estimates of the time needed by an above benchmark small system utilizing cost of service brings the time to 550 hours (250 hours for cost of service study, 200 hours for Form 393 and 100 hours for reporting and monitoring) in the first year of regulation.

If a total loaded labor rate of $25 an hour is assumed for doing the cost study and Form 393, the first year total cost for a small company doing a cost of service study would come to $13,750 and the initial year of regulation per subscriber cost for a 500 subscriber company would be $2.29 per month.[4]

The Commission should note that the time and expense of a cost study does not vary much by company size. In fact, the studies may be more expensive for small companies now operating independently and without great diversification of the type that would already involve sophisticated accounting and allocations.

NTCA is also concerned that small systems must bear the increased financial burdens of equipment basket cost studies associated with Form 393 even if their rates are not above benchmark. As stated above, it is estimated that a minimum of 200 hours is required to complete the form in year 1. For a small system of 500 subscribers, this activity combined with the 100 hours for monitoring and reporting, results in a per subscriber cost of $1.25 per month.

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[4] $2.29 is obtained by dividing the sum of 550 (hours for completing Form 393) x $25 (loaded hourly rate) by 6000 (12 months x 500 subscribers).

In addition, the Commission should note that small systems will have added financial burdens for years to come unless it grants the systems permanent relief from the current rules. The Commission's price cap regulations will require annual rate adjustments which will involve added accounting functions for these small operators. Anywhere from 40 to 200 hours could be involved in complying with Commission rules and filling out forms. The "equipment basket" cost study will also involve annual updates calling for time estimated at 100 hours minimum. In addition, there may be cost of service study requirements for cable service tiers in subsequent years. It is estimated that these will require as much as 200 hours depending on the ultimate form of the rules and the procedures the Commission adopts.[5] Likewise, it is expected that additional annual costs will result if the Commission adopts and applies to small companies the requirements for supplemental financial and cost accounting and annual reporting contained in Appendix A and B, respectively of the Notice of Proposed Rulemaking in In the Matter of Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992, MM Docket No. 93-215 (released July 16, 1993). It is also likely that small systems will have additional billing system scots due to the complexity of the new rate structure, and that there will be additional

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[5] Estimated second year regulatory costs for a 500 subscriber (cost of service) system are $10,000 or $1.67 per subscriber, for a benchmark/price cap system of the same size $7,500 or $1.25 per subscriber.

costs related to customer service standards, customer confusion and customer expectations related to cable regulation. Further, on August 27, 1993, the Commission announced still other requirements that will involve added costs for small systems.[6]

It goes without saying that these costs will have to be passed on to small rural system CATV subscribers in the form of higher rates to avoid confiscation and/or service deterioration. Some small CATV systems in rural areas may be forced to go out of business as a result of regulatory costs.[7] This type of result is obviously not what Congress intended in regulating rates. NTCA believes the Commission should prevent effects of this type. It recommends in Section 623(i) of the Act, requisite authority revisiting and revising of the CATV rate regulation scheme to avoid these adverse effects.

In NTCA's view, the rules should not be applied to eliminate the benefits the Act was intended to provide. Unless, permanent relief is provided for small systems, this may occur. Therefore,

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[6] The Commission's Report No. DC-2482 announcing its First Report on Reconsideration, in this docket, states that costs associated with upgrades and other capital improvements must be evaluated using cost of service principles. Also, quarterly rate filings requiring showings of increases and decreases in costs are now allowed and will involve additional burdens.

[7] As stated in note 3 above, a 200 subscriber system with annual revenues of $52,000 and rates above the benchmark would incur regulatory costs of $13,750 in the first year of regulation. The impact of this significant added cost, the $2.29 monthly increase in rates, and subsequent increases could easily push such a system over the brink.

NTCA urges the Commission to ameliorate for small systems and small system customers the harsh effect of its rules.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to revise its rules to permanently reduce regulatory burdens for small systems with fewer than 1,000 subscribers.

Respectfully submitted,

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August 31, 1993

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in MM Docket No. 92-266 was served on this 31st day of August 1993, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list.

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